

INSTRUCTIONS AND GENERAL INFORMATION

GENERAL INFORMATION

- Acronyms or form numbers used in these instructions:

B&P 227-A	Business & Professions Code Notice of Intended Transfer . . . Under Sections 24071.1 and 24071.2 B&P Code
211	Application for Alcoholic Beverage License
- The purpose of a Notice of Intended Transfer ("notice") is to permit creditors to take steps to protect their interests.
- Record the notice in the office of the county recorder of the county or counties in which the licensed premises are situated. (Section 24073 B&P Code)
- ABC employees shall not prepare the notice because it affects the rights and duties between the parties.
- If there is a defect in the notice, a change in the full amount of consideration from that shown in the notice, or you do not submit a notice with the license application, ABC will not process the transfer until the 11th day after the new notice is properly recorded.
- A notice does not eliminate the need to comply with Division 6 of the Commercial Code, which relates to the business, stock in trade, fixtures, etc., of a merchant. ABC does not give advice on what will meet the Commercial Code requirements.
- Corporations, limited liability companies and limited partnerships use *Form ABC-227-A* for any of the following:
 - Transfer of 50% or more of the stock in a corporation
 - Transfer of 50% or more of the capital or profits in a limited partnership
 - When there is a new general partner in a limited partnership
 - Transfer of 50% or more of the membership interests in a limited liability company

INSTRUCTIONS

Licensee's name(s) (Item 1) — Enter the name(s) of the current licensee. For a sole owner, the name of the owner. For a husband and wife, the name of each person. For a general partnership, the name of each partner. For a limited partnership, limited liability company, or a corporation, the name of the entity.

Premises address (Item 2) — Enter the location of the premises for which the license is issued.

Licensee's mailing address (Item 3) — Enter the address where the licensee receives mail. It may differ from the premises address.

Applicant's name (Item 4) — Enter the name of the applicant. For a general partnership, the names of the individual partners.

Proposed business address (Item 5) — Enter the address of the proposed business. If the license will remain at this location, this would be the same as Item 2. If the license is being moved to a new location, this would be the address of the new location.

Applicant's mailing address (Item 6) — Enter the address where the applicant receives mail. It may differ from Item 5.

Kind of license intended to be transferred (Item 7) — Enter the license type (e.g., Type 21) or a description (e.g., Off-Sale General License).

Total consideration to be paid for the business and license (Item 10) — Enter the dollar amount of the entire consideration. The amount must include inventory, whether actual cost, estimated costs, or a not-to-exceed amount. Show whether it is cash, checks, promissory notes, and/or tangible and intangible property, and the amount of each. (Section 24074 B&P Code)

The total consideration may be the amount for: (a) the real property and licensed business, (b) the business and ABC license, or, (c) the ABC license only when it is the only asset being transferred person to person to another location. If no present consideration is involved in the transfer of a license, enter "zero." (If no consideration is involved in the transaction, an escrow is not required.)

Original on- and off-sale general licenses cannot transfer for two years nor be sold for more than \$12,000 for two years following the date of issuance. Licenses transferred inter-county cannot transfer for two years nor be sold for more than \$10,000, or more than \$6,000 if the license was originally issued within the past five years. (Sections 24079 and 24070 B&P Code)

Signatures — One signature for the transferor and one for the transferee is sufficient.

MISCELLANEOUS INFORMATION

Escrow holder

An escrow holder is a person, corporation, or association not a party to the transfer. All escrow agents must incorporate and be licensed for that purpose (exceptions are: banks, trust companies, building and loan or savings and loan associations, insurance companies, lawyers, abstract of title and title insurance companies, persons

licensed by the Real Estate Commissioner while performing acts incidental to their real estate business, and joint control agents handling and disbursing building loan construction monies). (Section 24074.1 B&P Code and Sections 17200 and 17006 Financial Code)

Any escrow must remain open until ABC approves the qualifications of the applicant and premises.

The escrow holder shall not release any funds in the escrow in exchange for a promissory note or in exchange for any other consideration of less value to the creditors than the funds exchanged. (Section 24074.2 B&P Code.)

Guarantor

A guarantor who meets the requirements of Section 24074.4 B&P Code is the person who will become secondarily liable for any debt of a Type 20 license transferor. An escrow is not required if a corporate person files with ABC a guaranty of full, prompt and faithful payment of all claims of bona fide creditors of a licensee, and such guaranty is acceptable to the creditors. (Section 24074.4 B&P Code)

Liens and Claims Against Escrow

ABC may refuse to transfer any license when the applicant or licensee owes money to the Board of Equalization (sales and use taxes), Franchise Tax Board (income taxes), cities and counties (property taxes) or Employment Development Department (employment taxes). The law allows the escrow holder to pay these taxing agencies the money owed prior to close of escrow. (Section 24049 B&P)

The payment of creditors' claims involves matters of private right and is not within ABC's jurisdiction. It is the creditors' right to seek remedy in the courts. ABC does not assess the validity or priority of creditors' claims. The purpose of the notice before filing transfer applications is to permit creditors to take steps to protect their interests.

The licensee and applicant must enter into an agreement directing the escrow holder to pay the claims of bona fide creditors (after any taxes due under Section 24049 B&P have first been cleared). The law lists the priority that the escrow holder must give to creditors' claims. (Section 24074 B&P Code)

Exceptions for Notice and Escrow

A notice and escrow are not required for:

- A transfer application made by an executor, administrator, guardian, trustee, receiver or other person acting in the legal or proper discharge of official duty, or in the discharge of any trust imposed upon him by law.
- Any transfer or assignment made for the benefit of creditors.
- Transfers to a surviving spouse of a deceased licensee (where the deceased leaves no estate to be administered), to the surviving partners of a deceased licensee, to the executor, administrator, conservator or guardian of the estate of a licensee, to the trustee of a bankrupt estate of a licensee, a receiver of the estate of a licensee or the properly appointed statutory or common law assignee for the benefit of creditors of a licensee.

Note: A notice and escrow are required for the subsequent transfer *by* the surviving spouse of a licensee or *by* the surviving partner(s) of a deceased licensee.

- A transfer from premises to premises only.
- A transfer from a corporation to the same persons (or their spouses) owning all the stock.

(Section 24075 B&P Code)